85-1855

No.

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

TERM: OCTOBER 1985

ROLAND A. JONES, not a lawyer, pro se

PETITIONER,

v.

DEPARTMENT OF HUMAN RESOURCES (DHR), STATE OF GEORGIA, et al.,

RESPONDENTS.

FED. R. CIV. P. 60(B)
PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

ROLAND A. JONES, PRO SE
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78 pp

EDITOR'S NOTE

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QUESTION PRESENTED FOR REVIEW

PURSUANT TO FED. R. CIV. P. 60(b), WHEN AN EXCEPTION TO FED. R. CIV. P. 12(b)(1)(6) IS APPLIED TO MY PRO SE COMPLAINT WITHOUT APPLYING THE SAFEGUARDS OF HAINS, McDONNELL v. GREEN, GRIGGS, ROTH, AND BROWNLEE, AND MY 60(b) IS DISMISSED AS "FRIVOLOUS", WHETHER OR NOT IT CAN BE SAID WITH ASSURANCE THAT UNDER MY PRO SE ALLEGATIONS MY OTHER INTERESTS WERE NOT IMPROPERLY FORECLOSED OR OVERLOOKED?

I BELIEVE THAT MY FEDERALLY PROTECTED CLAIMS/INTERESTS, OTHER THAN THAT OF "PROPERTY" INTEREST, AND INTERESTS OF RIGHTS AND BENEFITS EXPRESSLY PROVIDED PROBATIONARY EMPLOYEES BY STATE LAW AND MERIT SYSTEM RULES AND REGULATIONS WERE IMPROPERLY FORECLOSED OR OVERLOOKED.

IN OTHER WORDS, IS IT FAIR THAT NOT HAVING A "PROPERTY INTEREST" IN EMPLOYMENT SHOULD FORECLOSE ON ALL OTHER FEDERALLY PROTECTED INTERESTS PROVIDED FOR BY LAW (e. g. BEING TERMINATED FOR PROTESTING DISCRIMINATION), AND SHOULD IT FORECLOSE ON PRE AND POST TERMINATION RIGHTS AND BENEFITS THAT ARE EXPRESSLY PROVIDED A PROBATIONARY EMPLOYEE?

I HEREBY CERTIFY that the following persons are interested in the outcome of this case:

The decision (Jones v. State of Georgia, 725 F.2d 622, 1984): The Honorables Godbold (Chief Judge), Roney, and Tjoflat, (Circuit Judges), 11th Circuit.

Dismissing my Fed. R. Civ. P. 60(b) Appeal as FRIVOLOUS and denying my Petition for Rehearing with a suggestion for rehearing en banc: The Honorables Tjoflat, Vance, and Kravitch.

The Honorable Marvin H. Shoob, District Court for the Northern District of Georgia.

Roland A. Jones, Lt. Col., U.S. Army (ret.) (Petitioner).

Respondents:

Dr. L. Patricia Johnson, Division of Family and Children Services (DFACS), DHR, 47 Trinity Avenue, S.W., Atlanta, Georgia 30334.

Mr. Douglas G. Greenwell, DFACS, DHR, 47 Trinity Avenue S.W., Atlanta, Georgia 30334.

Mr. Truman A. Moore, DFACS, DHR, 47 Trinity Avenue S.W., Atlanta, Georgia 30334.

Mrs. Barbara G. Deedy, DFACS, DHR, 47 Trinity Avenue S.W., Atlanta, Georgia 30334.

Ms. Diana K. Fox, DFAC, DHR, 47 Trinity Avenue S.W., Atlanta, Georgia 30334.

Mr. Wayne P. Yancey, Attorney for Respondents.

Pro se

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....iv

ISSUE PRESENTED.....i

SUMMARY OF THE CASE CAUSES FOR ACTION PRESENTED TO THE LOWER COURTS.....1

CONCLUSIONS OF SAFEGUARDS LAW AND SAFE GUARDS DENIED ON WHICH THIS PETITION IS BASED.....10-18

GROUP 1: Controlling Georgia case law safeguard.....10

GROUP 2: Controlling Hains safeguards.....10

GROUP 3: Controlling Huges safeguards.....13

GROUP 4: Controlling Roth safeguards.....13

GROUP 5: 1st Amendment.....14
42_U.S.C_1983.....14
Title VII, 2000e-2(a)(1)(2).....14

1. Section_703(a)(1).....14
2. Section_703(a)(2).....14
3. Section _703(h).....14
4. Section 704(a) and the 1st Amendment.....14

GROUP 6:McDonnell Douglas tests.14

GROUP 7: Other cases of rights not denied.....15-18

SUMMARY OF PROCEEDINGS.....18

ARGUMENTS: REASONS WHY I THINK THE DECISION AGAINST ME IS UNFAIR.....24

1. Due process can only be held as not due if no process was due.....26

2. Equal protection under the law and due process is due because racial discrimination was claimed.....29

3. 1st Amendment due process unfairly foreclosed.....30

4. It has been held on the same matter that the speech of a non-tenured, such as I was, is a protected 1st Amendment activity.....31

5. It has been held on the same matter that an abrupt termination after notification under the 1st Amendment is illegal.....34

6. The lower courts violated the rules of evidence and prima facia.....36

7. Factual issues raising federally protected interest, other than "property" interest, were present and presented as issues and ignored by the lower courts.....39

8. Dismissal of my pro se complaint and my Rule 60b appeal as frivolous violated this Court's standards for pro se complaints.....40

9. While ruling simply on the matter of a "property interest", my other federally protected claims, inartfully presented, were overlooked and improperly foreclosed.....44

10. In order to hold against me,

the lower courts made an improper exception to the F. R. Civ. P.....44

11. Use of the "exception" to the rules by the lower courts denied me a full and com-plete hearing on my other interests at stake.....48

12. Use of the "exception" to the rules by the lower courts denied me benefits pro-vided for by Roth and Georgia law, and Geor-gia Merit System Regulations.....50

13. Arguable legal substance was contained in my claims warranting a full and complete hearing.....51

14. My case was dismissed only because I was pro se.....52

15. The lower courts improperly allowed an ex post facto change to be made in the rule respondents used to terminate me.....55

16. I was improperly denied the opportunity to prove that Rule 12.301.1 operates more harshly against blacks.....58

17. Pre and post-termination rights were illegally foreclosed.....59

18. The court's scope of inquiry into my claims was not limited by the Bishop "harsh fact" rule.....59

CONCLUSION.....60

TABLE OF AUTHORITIES

CASE LAW

Albitz v. State of Georgia,
N. D. Ga., CA79-634A.....26

Bennett v. Passic,
545 F.2d 1260 (10th Cir. 1976).....41

Board of Regents v. Roth,
408 U.S. 64...6,20,23,25,27,28,29,49,50
51,64,65

Borden's Co. v Baldwin,
293 U. S. 194, 213.....11

Bishop v. Wood
426 U.S. 341....15,16,22,50,57,60,61,62

Blowers v. Lawyers Cooperative
Publishing Co.
25 FEP Cases 1425, 1435, 1981).....56

Brownlee v. Williams,
233 GA. 548, 555, 1975)..10,20,25,27,29
64,65

Conley v. Gibson,
355 U.S. 41, 45-46,
78 S.Ct. 99, 101-02,
2L.Ed.2d 80, 1957.....11,12,20,24,27,29
33,37,40,41,42,53

Cooper v. Pate,
378 U. S. 546, 1964.....43

Cruz v. Beto,
405 U S at 326, 1971).....41,42

Daye v. Bounds,
509 F.2d 66, 68 (4th Cir).....12

Estelle v. Gamble
429 U. S. 1976.....11,20,24,27,29,43,46

FirstNational Bank v.
Cities Service Co.,
391 U. S. 253, 290, 88 S.Ct.
1593, 20 L.Ed.2d 569, 1968).....36

Flowers v. Turbine Support Div.,
507 F.2d 1242, 1244 (5th Cir. 1975)...12

Franklin v. Murphy,
745 F.2d 1221, 9th Cir....1984).43,52,57

General Business Systems v.
North American Phillips Corp.,
699 F.2d 965, 971, 9th Cir. 1983)....36

Givhan, U.S. Supreme Court,
58 L.Ed 2d 619, 1979).....13-14

Griggs,
401 U.S. 424 (1971)...20,25,27,29,38,39
64,65

Hains v. Kerner,
404 U. S. 519 520-21,
92 S.Ct 594, 595-96,
30 L.ed.2d 652, 1972)...1,10,12,20,23,24
25,27,29,33,37,40
41,44,48,54,61,64,65

Hohman v. Hogan,
597 F.2d 490 2d Cir1979...33,34,37,40,56

Hughes v. Rowe,
U. S. 449, per curiam, 1980).....13,42

Industrial Bldg. Materials,
Inc v. Interchemical Corp.,
437 F.2d 1336 (9th Cir. 1980).....42

Jefferies v. Harris County
Community Action Association,
615 F.2d 1025 (5th Cir. 1980)..9,15,34,64

Jones v. Commty. Redevelopment
Agency of L. A.,
733 F.2d 646, 9th Cir. 1984.....43,52

Jones v. State of Georgia,
725 F.2d 622, 1984).....24,35,43

Lock v. Kansas City Power and
Light Co., 660 F.2d 359,
(8th Cir. 1981).....56

Marshall v. Goodyear Tire and
Rubber, 554 F.2d 730
(5th Cir., 1977).....49

Marks v. Prattco,
607 F.2d 1153 (5th Cir.).....49

Maty v. Grasselli Chemical Co.,
303 U. S. 197.....52

May Department Store v. Graphic
Process Co.,
637 F.2d 1211, 1216, 9th Cir 1980).43,52

Mcdonnell Douglas Corp. v. Green
411 U.S. 792, 1973..14,20,23,24,25,27,29
39,48,49,64,65

Monell v. Dept. of Social Services,
436 U. S. 658, 1978.....57,58

Milton v. Nelson,
527 F.2d.1158, 1160 (9th Cir. 1975)...12

Payne v. McLemore's Wholesale Stores,
654 F.2d 1130 (5th Cir. 1981.....18

Polk Co v. Glover,
305 U. S. 5.....11

Pickering v. Board of Ed.,
391 U.S. 563, 88 S.Ct
1731, 20 L.Ed.2D 811 1968.....30

Raiford v. Pounds,
640 F.2d 944 (9th Cir. 1981).....42

Ray v. State of Georgia, Department of Human Resources,
725 F.2d 655, (11th Cir. 1984).....15

Rescue Army v. Municipal Court,
332 U. S. 549, 574-575.....11

Robert v. Heyne,
547 F. 2d 994, 1976).....40

Shull v. Pilot Life Ins. Co.,
313 F. 2d 445, 447 (CA5 1963).....11

Smith v. State of Georgia,
Department of Human Resources
684 F.2d 729 (11th Cir. 1982).....17

Stanger v. City of Santa Cruz,
653 F.2d 458, 460 (9th Cir. 1980.....52

Teamsters v. United States,
431 U.S. 324 (1977).....38

Tolbert v. Leighton,
623 F.2d 585, 587 (9th. Cir. 1986)....42

Ulmer v. Chancellor,
691 F.2d 209 (5th Cir. 1982).....41

Watson v. Ault,
525 F.2d 886, 892, 5th Cir1976).13,43,53

Webster v. Redmond,
599 F.2d 793-1979.....15,38

Whatley v. MARTA,
632 F.2d 1325 (5th Cir 1980).....18

Whiting v. Jackson State University,
22 FEP 1296 (5th Cir. 1980).....49,56

Whittaker v. State of Georgia,
Department of Human Resources,
U.S. Dist. Ct. ND GA. CA C79-2311A,
30 FR Ser2d 931, 1980.....16

White v. South Park Independent School District, 639 F.2d 1163 (5th Cir. 1982).....15,31,64

Wiggins v. New Mexico State Supreme Court, 664 F.2d 812, 10th Cir. 1981.....41

Williams v. Tucker, 645 F.2d 404, 415 (5th Cir. 1981)..46.47

Woodall v. Foti, 648 F.2d 268, 272 (5th Cir. 1981).....54

Wright v. El Paso County Jail, 642 F.2d 134, 135 n. 1 (5th Cir 1981).54

1st Amendment.....2,4,5,14,17,23,27 28,30,31,32,33,35,44,59

42 U.S.C. 1983.....14,28,57

Title VII, 2000e-2(a)(1)(2).....17,44
Section 703(a)(1).....14,58
Section 703(a)(2).....14,58
Section 703(h).....14,58
Section 704(a).....4,5,14,18,23,30,58

Georgia Employment Security Law, Section 6(a).....37

Georgia Merit System Act 81.....58,65

Georgia Merit System Act 1398.....58,65

Georgia Personnel Board Regulation F.....5,6,8,32,36,45,65

U. S. Supreme Court Rule 22.1.....22
U. S. Supreme Court Rule 22.3.....22
U. S. Supreme Court Rule 29.4.....22
Fed. R. Civ. P. Rule 8(a).....48
Fed. R. Civ. P. 12(b) (1)(6)..23,27,28,44 46,47,48
Fed. R. Civ. P. Rule 12(e).....48
Fed. R. Civ. P. 60(b)...22,23,24,40,43,54

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SUMMARY OF THE CASE

Mr. Justice Brennan concluded Petitioners be accorded procedural safeguards before interests are deprived (See page 60 and safeguards at RA, "A" and Haines, GROUP 2, pg. 10, herein). Standards set by this Court for pro se allegations, were not applied and it was not said with assurance that I could prove not set of facts. As a pro se who is not a lawyer, I inartfully pleaded my case. The lower courts took advantage of this and ignored all procedural safeguards and my federally protected interests.

I was appointed under Rule 9 (RA, "A") in the "classified" service as a Planner II for a guaranteed six month test period under Rules 11.102 from May 18, 1981 to November 18, 1981, with the Division of Family and Children Services (DFACS), Department of Human Resources (DHR). I could legally only be terminated at the expiration of the six month period per

Rules 11.102 or 12.302.2 (RA, "A"). I reported for work on May 18 and was fired effective October 23, before the guaranteed six month test period had been completed.

Shortly after reporting for work I was injured on the job as the result of being required to move office furniture. This problem led to a 1st Amendment protest from me which was unfairly concluded with my premature termination on October 23.

While I did report for work on May 18, 1982, in violation of three (3) Merit System Regulations (11.103, A.302, B.201.1, RA "A") my starting date of employment was erroneously recorded by my superiors as June 1, 1981. This problem also led me to a 1st Amendment protest but was also unfairly concluded with my premature termination on October 23.

After discussing and receiving agreement and approval from the Director of the Office of Administration and Manage-

ment concerning the correctness of my claim that three (3) Merit System Rules stated that my employment starting date actually should be corrected to May 18, on October 5, 1981 I filed a written protest with the Chief of General Administration protesting the violation of the three (3) rules.

The Director of the Office of Administration and Management acted in bad faith to set me up for a protest and he reneged on his approval: On October 13, 1981 the Chief of General Administration, with the concurrence of the same Director of Office of Administration and Management who had agreed and approved of my protest, denied my protest on October 23, 1981. This setup was also unfairly concluded with my premature termination on October 23, 1981. During the conduct of my guaranteed six month employment period I discovered that two other jobs (Director of DFACS Management Information

and DFACS Training Coordinator) were open and there was recruiting within the DFACS; However, even though I was qualified I was denied an opportunity to apply and compete to obtain any one of the jobs. A white male, who was not employed within the DFACS, was hired as the Director of DFACS Management Information, and a white female, who was not employed within the DFACS, was hired for the DFACS Training Coordinator. These hirings also led to a 1st Amendment and Section 704(a), Title VII protest from me that was also unfairly concluded on October 23 with my premature termination.

During the first week of August 1981, I filed a verbal 1st Amendment and Section 704(a), Title VII protest with the Deputy Director of DFACS concerning the hiring of the white male emphasizing to him that I was already on hand and qualified for the job. On August 13 and 19, 1981 I filed a written protest to the Director of Manage-

ment and Training under the same logic as used for the other job for the Training Coordinator...I was already on hand and qualified for the job. On August 21, 1981 a written protest was filed with the Director of the Office of Administration and Management (RA, "C"). These 1st Amendment and Section 704(a), Title VII protests were also unfairly concluded with my premature termination on October 23.

On October 16 1981, under Regulations F.101, F.102, F.103, F.105, F.202, F.203, F.301, F.402.2, F.402.4, F.404.1, F.404.2, F.406, F.501, and F. 502 (RA, "A"), I advised my immediate supervisor that since my protests had not been resolved I would file a formal 1st Amendment and Section 704(a), Title VII discrimination protests against her and the other respondents with the Board.

On October 22, 1981, under the above regulations, I filed my written notice of intent to file a grievance (RA, "C1").

My verbal notification on 16 and my written notification on 22 October 1981 precipitated my abrupt termination; however, the notification under F.406, F.203, F.402.2, F.301, F.404.1, F.402.4, F.501, and F. 502 (RA, "A") provided for 15 days to file the formal grievance complaint; therefore, the effective date of my proposed termination should have been automatically stayed for 15 days (from October 23 to November 7th) to allow for filing the formal protest. Secondly, my proposed termination was also automatically stayed until the process was completed (60 days is allowed per paragraph F.501...until December 22, 1981); however, the supervisors violated the entitlement to rights under the above regulations and under the safeguards of Board of Regents v. Roth, 408 U.S. 64 and enforced my termination as of October 23.

On October 22, 1981, (9 days after the Chief of General Administration and the

Director of the Office of Administration and Management had denied my October 5th request to correct the record and 26 days before the expiration of my guaranteed six month work test period), arbitrarily and without legal job performance justification, my superiors, Director of Office of Administration and Management and Diana K. Fox, with the help of the others named herein, under color of law, seized upon the pretext of all of my protests and my October 16th and 23d notice to file an appeal against them and moved to terminate with a verbal notification of less than 24 hours informing me that I was being terminated effective October 23, 1981 in order to circumvent my pre-termination due process rights provided to me under Regulation F; and they also moved to terminate me to also deny me promotion to permanent (tenured) status under Rule 11.203 (RA, "A") which would have provided me with more exten-

sive appeal rights, much greater than those already guaranteed to me under Regulation F (RA, "A").

On October 22, 1981 at 5:30 PM, when I asked again for justification why I was being terminated, the Director of the Office of Administration and Management informed me: "we've got to protect Diana".

On October 26, 1981 formal notification of my premature termination was received advising me that I had been terminated under the Work Test Termination Rule 11.202A (RA, "A" and ltr. at "B") effective October 23.

On November 13, 1981, under F.402.4 (RA, "A") and in response to my October 22d notice of intent to file against them, my superiors (RA, "C3") illegally broke from Regulation F and foreclosed on my PRE-termination process under the requirements of F.101, F.103, F.105, F.202, F.203, F.301, F.402.2, F.402.4, F.404.1, F.404.2, F.406, F.501, and F.502 by

informing me that my notification to them of my grievance intent had now been foreclosed on by my termination (RA, "C3").

On December 15, 1981 the Commissioner, Department of Human Resources, in writing (RA, "D"), made the fact known that it was my protests of unfair treatment to my supervisors that caused my termination:

> "...problems developed in the management of his employment, which grew to such magnitude that continuation of employment was not advisable". (RA, "D").

On December 26, 1982 an Examiner of Georgia Department of Labor (RA, "E") also corroborated by concluding that my premature termination had nothing to do with my job performance or the lack thereof (See also Jefferies, supra):

> "Information supplied by employer [superiors who fired Jones] for the hearing does not specify any particular instances of claimant's failure to follow rules, orders, or instructions or to perform the duties for which hired." (RA, "E")

The Court of Appeals even confirmed (RA, "F", par. 3) the above irregular

process and untimely and premature termination but it equivocated on a decision by avoiding the facts of the other interests at stake concerning my protest:

> "Jones reported for work May 18, 1981, but was not credited with starting until June 1, 1981. When he informed his supervisors that this treatment violated the department's regulations, he received no relief. He continued to press this claim as well as other objections to his working conditions, and was fired in October 1981."

CONCLUSIONS OF LAW AND SAFEGUARDS DENIED ON WHICH THIS PETITION IS BASED

GROUP 1: Controlling Georgia case law safeguard: The Georgia Supreme Court has ruled that the loss of rights guaranteed by a Merit System's Regulations constitutes a deprivation of constitutional rights (See Brownlee v. Williams, 233 GA. 548, 555, 1975).

GROUP 2: Controlling Hains safeguards:

> "The reasons for the Hains test are manifest. A pro se complaint provides an unsatisfactory foundation for deciding the merits of important questions because typically it is inartfully drawn,

unclear, and equivocal, because thorough pleadings, affidavits, and possibly an evidentiary hearing will bring out facts which simplify or make unnecessary the decision of questions presented by the naked complaint...Haines teaches that the decision on the merits of the complaint should normally be postponed until the facts have been ascertained. The same approach was taken in Polk Co v. Glover, 305 U. S. 5, in which the Court reversed the dismissal of a complaint, without intimating any view of the constitutional issues, on [t]he salutary principle that the essential facts should be determined before passing upon grave constitutional questions...Id., at 10. See also Borden's Co. v Baldwin, 293 U. S. 194, 213 (Cardozo and Stone, JJ, concurring in result)...Alternatively, a more concrete record will be available on which to decide the constitutional issues. See generally Rescue Army v. Municipal Court, 332 U. S. 549, 574-575. Even when constitutional principles are not involved, it is important that `the conceptual legal theories be explored and assayed in the light of actual facts, not as a pleader's supposition,' so that courts may avoid `elucidating legal responsibilities as to facts which may never be' Shull v. Pilot Life Ins. Co., 313 F. 2d 445, 447 (CA5 1963). (Stevens, dissenting, Estelle v. Gamble, 429 U. S. 1976.

"...the District Court erred in dismissing his pro se complaint without allowing him to present

evidence on his claims...allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears `beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'...Accordingly, although we intimate no view whatever on the merits of petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof. The judgment is reversed and the case is remanded for further proceedings consistent herewith." Haines v. Kerner, 404 U. S. 519 520-21, 92 S.Ct 594, 595-96, 30 L.ed.2d 652, 1972), quoting Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-02, 2 L.Ed.2d 80, 1957, reaff. in Estelle, 429 U.S. at 99, 106, 97 S.Ct. at 292.

"The ninth Circuit has repeated this language since Haines v. Kerner, See Milton v. Nelson, 527 F.2d.1158, 1160 (9th Cir. 1975), and the `especially broad discretion' formulation has been quoted in other circuits. See, e.g. Daye v. Bounds, 509 F.2d 66, 68 (4th Cir), cert. denied, 421 U.S. 1002, 95 S.Ct. 2404, 44 L.Ed.2d 671 (1975); Flowers v. Turbine Support Div., 507 F.2d 1242, 1244 (5th Cir. 1975).

"...the threshold issue the trial court is an assessment of the substance of the claim presented, i.e., is there a factual and legal basis...for the asserted wrong, however inartfully pleaded" (Watson v. Ault, 525 F.2d 886, 892, 5th Cir. 1976).

GROUP 3: Controlling Huges safeguards:

"...the controlling principle that a ...complaint prepared without counsel should not be dismissed unless it appears beyond doubt that he can prove no set of facts entitling him to relief". (Huges v. Rowe, 449 U. S. 1980).

GROUP 4: Controlling Roth safeguards:

(1. "To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it." (2. "He must have more than a unilateral expectation of it". (3. "He must, instead, have a legitimate claim of entitlement to it." (4. "Property interest, of course, are not created by the Constitution. Rather, they are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law--rules or understandings that secure certain benefits and that support claims of entitlement to those benefits". (5. "Thus, the Court has held that a person receiving...benefits under statutory and administrative standards defining eligibility for them has an interest in continued receipt of those benefits that is safe-

guarded by procedural due process". (6. Rights are not lost to public employees (See Givhan, U. S. Supreme Court, 58 L.Ed 2d 619, 1979).

GROUP 5: 1st Amendment: Selfexplanatory.

42 U.S.C 1983: "Every person who, under color of any statute, ordinance, regulation, custom, or usage...subjects, or causes to be subjected...to the deprivation of any rights, privileges..." .

Title VII, 42 U.S.C. 2000e-2(a)(1)(2):

1. Section 703(a)(1): "It shall be an unlawful employment practice...to discharge any individual, or otherwise to discriminate against any individual with respect to his... terms, conditions, or privileges of employment..."

2. Section 703(a)(2): "...to limit...or classify his employees... in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee..."

3. Section 703(h): "It shall be an unlawful employment practice for an employer to apply different...terms, conditions, or privileges of employment pursuant to a bona fide...merit system.

4. Section 704(a) and the 1st Amendment: "It shall be an unlawful...for an employer to discriminate against any of his employees because he opposed any practice made unlawful...in any manner"

GROUP 6: McDonnell Douglas tests, see page 49, herein.

GROUP 7: Other cases of rights not denied

The courts have not denied these rights to other nontenured employees who have brought suit against the same State of Georgia Department of Human Resources without applying an "exception" to the rules and Bishop:

EXAMPLES 1 2 and 3: See White, Jefferies, and Webster, supra.

EXAMPLE 4: I was a black "nontenured" employee and this Court applied Bishop against me. Mr. Ray of Ray v. State of Georgia, Department of Human Resources, 725 F.2d 655, (11th Cir. 1984) was a white "nontenured" employee and Bishop was not applied. The same District Court Judge had both cases at the same time. The Court of Appeals also had both of our cases at the same time and it also did not apply Bishop to the Ray case:

"The facts of this case are quite complicated...Yet, these facts

> **might shed light on the legal approach necessary...We would be loath to tackle such an important issue without full factual development, for facts often influence policy in a new area of the law...The district court overlooked the possibility that even if the standard put forward by appellants [DHR] is correct, Ray might still be able to produce evidence showing that appellants were directly responsible..."**

EXAMPLE 5: The following case is shown to demonstrate that Bishop was again not applied and that a classification of "probationary" employee does not usurp discrimination complaints in a court of law. In Whittaker v. State of Georgia, Department of Human Resources, U. S. Dist. Ct. ND GA. CA C79-2311A, 30 FR Ser2d 931, 1980 (Exhibit "C3", R) it was held that:

> a. May 15, 1980: "Plaintiff Bettye Ann Whittaker is a black woman who was a probationary employee with the Department of Human Resources of the State of Georgia until she was discharged."
>
> "It is also undisputed that the number of Negroes on the staff during the year studied is disproportionately low; while at the same time, the discharges for

Negroesis disproportionately high."

b. August 27, 1980: "The court has considered the possibility of certifying a more narrowly defined class so that plaintiff could challenge either employment practices...or policies affecting working test employees."

In the footnote 1: "the Court also extended class discovery so that the plaintiff would have full opportunity to explore the allegedly discriminatory system-wide employment practices" [used against DHR probationary employees].

EXAMPLE 6: Smith v. State of Georgia, Department of Human Resources 684 F.2d 729 (11th Cir. 1982): (a. As I was discharged for engaging in an activity protected by the State of Georgia Personnel Board's Regulation F, Title VII, and the 1st Amendment, Smith was also engaged in an activity protected by Title VII and the 1st Amendment. (b. As I was the subject of an adverse employment decision, Smith was the subject of an adverse employment decision and prevailed on retaliation. The Court did not give me a chance to even present my case. (c.

See also Payne v. McLemore's Wholesale Stores, 654 F.2d 1130 (5th Cir. 1981); Whatley v. MARTA, 632 F.2d 1325 (5th Cir 1980, now known as the 11th Cir.).

SUMMARY OF PROCEEDINGS

A suit was filed in the Northern District of Georgia, Atlanta Division on November 19, 1981 charging, inartfully, that during my four (4) month, twenty three (23) day period of employment respondents had entered into an ensuing and continuing "pattern" of disparate treatment and discrimination designed to deny me job opportunities, and because of my opposition to these discriminatory practices and procedures supervisors entered into an agreement of retaliation and terminated my employment stating interest at stake under Regulation F, State Merit System Rules and Regulations, 1st Amendment, Section 704(a), Title VII, and discrimination claims: (1. unlawful discrimination because of race. (2. unfair

discriminatory treatment. (3. erroneous interpretation of DFACS/DHR policies. (4. erroneous application of DFACS/DHR policies. (5. erroneous interpretation of the State Merit System's Rules and Regulations. (6. erroneous application of the State Merit System's Rules and Regulations. (7. capricious interpretation of DFACS/DHR policies. (8. capricious application of DFACS/DHR policies. (9. capricious interpretation of the State Merit System's Rules and Regulations. (10. capricious application of the State Merit System's Rules and Regulations. (11. operating a probationary period that is wholly subjective, and (12. arbitrary discharging of me using the ambiguous Involuntary Separation Rule 12.3001.1, coupled with the an in-house DHR Rule A.6.a to foreclose on agency pre and post grievance rights due process.

With regard to the above and other than a "property interest", the District Court

and the Court of Appeals (RA, "F" and "G") ignored all of my other interests that were at stake and did not apply the safeguards and tests of this Court's mandates in Hains v. Kerner, 404 U. S. 519 520-21, 92 S.Ct 594, 595-96, 30 L.ed.2d 652, 1972), which quoted Conley v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-02, 2 L.Ed.2d 80, 1957, reaffirmed in Estelle, 429 U.S. at 99, 106, 97 S.Ct. at 292, and did not apply the safeguards and tests of Board of Regents v. Roth, 408 U.S. 64, Mcdonnell Douglas Corp. v. Green, 411 U.S. 792, 1973, Griggs, 401 U.S. 424 (1971), and Brownlee v. Williams, 233 GA.1975).

The District Court incorrectly viewed my pro se complaint as raising only "property" interest due process and Section 1983 claims (RA, "G"); however, this was done without looking to the nature of my other interest that were at stake or implicated.

In essence, the District Court flatly ignored my 1st Amendment and discrimination claims and affirmed all of respondent's anti-pro se grounds as appropriate for disposing of my pro se civil rights, discrimination, retaliation, and 1st Amendment case, e. g. (RA, "P"): (1. My pro se complaint was "in agonizing and yet unintelligible"; (2. My pro se complaint "is so prolix, unintelligible, and ambiguous..."; (3. My pro se complaint was in violation of the rules: "The rules do, however, require that a complaint be intelligible"; (4. My pro se complaint "does not contain a short and plain statement of claims showing that Plaintiff is entitled to relief, Rule 8(a), Fed. R. Civ. P.....defendants move, in the alternative, for a more definite statement, Rule 12(e), Fed. R. Civ. P."; (5. My pro se complaint: "At the very least, the Defendants are entitled to a more definite statement and Defendants move...

pursuant to Rule 12(e)...that the Plaintiff be required to replead his complaint in a comprehensible form, clearly setting forth any claim for relief."; (6. "the federal court is not the appropriate forum in which to review the multitude of personnel decisions that are made daily by public agencies", (Bishop v. Wood).

After respondents had missed their filing date (o/a July 14, 1984) by 90 days with this Court (U. S. Supreme Court Rules 22.1 and 29.4), the Clerk allowed respondents to file two arguments for dismissal which were prohibited by Supreme Court Rule 22.3 then, this Court denied my inartfully pleaded Writ of Certiorari. By letter, however, this Court suggested that my Rule 60(b) motion be filed in District Court (RA, "H").

My Rule 60(b) requesting that my case be reinstated for resolution of the overlooked federally protected claims that

were at stake was filed in District Court on June 18, 1985 (RA, "I). It was based generally on the grounds that: I, as a pro se, inartfully pleaded discrimination, agency due process under Regulation F, 1st Amendment, retaliation case, and claimed that U. S. Supreme Court standards for pro se complaints, Haines, Mcdonnell Douglas, and Griggs had not been followed. The District Court denied.

On October 28, 1985 my Fed. R. Civ. P. 60(b) was filed with the 11th Circuit Court of Appeals claiming: (1. Bishop and Roth and an "exception" to Fed. R. Civ. P. 12(b)(1)(6) were erroneously applied to dismiss my pro se civil rights claims of discrimination and retaliation, and (2. Pickering was erroneously applied to dismiss my 1st Amendment/704(a) claim of being fired for protesting discrimination against me.

At the suggestion of the respondents (RA, "J") the Court of Appeals (RA, "K")

dismissed my Fed. R. Civ. P. Rule 60(b) as frivolous, without applying this Court's pro se safeguards brohght its' attention.

On February 11, 1986 and avoiding my hearing en banc, the Court of Appeals denied my petition for a rehearing en banc (RA, "L") with a novel approach of treating my Fed. R. Civ. P. 60(b) rehearing petition as only a motion for reconsideration when a decision has been rendered as Jones v. State of Georgia, 725 F.2d 622 (11th Cir. 1984) (RA, "F").

ARGUMENTS: REASONS WHY I THINK THE DECISION AGAINST ME IS UNFAIR.

I don't think it is fair that I, as a pro se, should be victimized by the very system that is supposed to be the processor of my quest for justice.

Against the above background of law and safeguards, because the District Court and the Court of Appeals did not apply the tests, safeguards, and mandates of Hains, Conley, Estelle, Mcdonnell

Douglas, Griggs, Roth, and Brownlee they overlooked my pro se rights granted by Haines, my rights to benefits as granted by Roth, my claims of discrimination and retaliation by being terminated for protesting discrimination against me as granted by the 1st Amendment and Section 704(a), Title VII, to be free from discrimination as granted by McDonnell Douglas and Griggs, and my due process rights expressly granted under the Personnel Brd's Merit System Reg. F (RA, "A").

As a person who is not a lawyer and based on my research, I want to respectfully tell you why I think it is unfair for me to be denied equal protection of the law and how unfair I feel it is for the law to penalize me just because I was a probationary employee, a black U. S. citizen, and because I acted pro se.

The Judge made a broad sweeping decision against me that is legally incomplete and judicially one sided, denied

my jury of my peers (a right which I have not waived), denied my motion for discovery, denied me the opportunity to present evidence of discrimination to maintain my pro se complaint.

1. Due process can only be held as not due if no process was due:

The District Court conducted no hearings, reviewed no evidence, and denied my discovery motion. Both the District Court and the 11th Circuit Court of Appeals denied me access to the sealed court records of the discrimination case of Albitz v. State of Georgia, N. D. Ga., CA79-634A which I believe contains historical discrimination information and evidence vital to the support my pro se discrimination claims.

The District Court also did not look to see if due process and benefits were expressly provided me by Georgia Personnel Board Merit System Regulations F (RA, "A") and other rules and regulations.

According to Board of Regents v. Roth, 408 U.S. 64, property interests are not created by the Constitution itself, but their dimensions are defined by existing rules or understandings that stem from an independent source such as State law--rules or understandings that secure certain benefits and that support claims of entitlement to those benefits.

Also without applying the safeguards of this Court's mandates in Hains, Conley, Estelle, Mcdonnell Douglas, Griggs, Roth, and Brownlee the Court of Appeals did not look at my other interest that were at stake (RA, "I", Ex. "D") and should have reversed simply on the ground that the District Court had flatly ignored my 1st Amendment claims; however, by applying an "exception" to Fed. R. Civ. P. 12(b)(1)(6) to my situation in order to affirm against me emphasizing: (1. "The District Court viewed the complaint as raising only "produe process

and Section 1983 claims...and dismissed for lack of jurisdiction. (2. "When a district court has pending before it both a 12(b) (1) motion and a 12(b) (6) motion, the generally preferable approach, if the 12(b)(1) motion essentially challenges the existence of a federal cause of action, is for the court to find jurisdiction and then decide the 12(b)(6) motion "....Exceptions to this rule exist, however, when the "plaintiff's claim `has no plausible foundation' or is clearly foreclosed by a prior Supreme Court decision" (RA, "F") 3. " The district court did not consider Jones's First Amendment claim when it dismissed for lack of jurisdiction. However, prior Supreme Court cases effectively dispose of this argument"; (4. "That the district court viewed the complaint as raising only due process and Sec. 1983 claims."; (5. Without applying the safeguards of Roth the Court erroneously

ruled: "(mistakes on personnel decisions not implicating federal constitutional rights do not in and of themselves raise a federal claim). Roth clearly precluded Jones' claim of a property interest"

Had the District Court and the Court of Appeals applied this Court's safeguards/mandates in Hains, Conley, Estelle, Mcdonnell Douglas, Griggs, Roth, and the Georgia Supreme Court's safeguard of Brownlee they would have found that claims, other than "property" interest, on which relief could be granted, were made in my pro se complaint.

2. Equal protection under the law with due process is due because racial discrimination was claimed:

I don't think it was fair that the District Court flatly did not consider whether the respondent's actions constituted racial discrimination. In my opinion, this alone constituted grounds for the decision to have been reversed by the Court of Appeals.

3. 1st Amendment due process unfairly foreclosed:

I don't think it was fair that the District Court flatly did not consider my 1st Amendment or my Section 704(a) claims. In my opinion, this alone also constituted grounds for the decision to have been reversed by the Court of Appeals. The Court of Appeals also unfairly did not consider my Title VII, Section 704(a). While it did consider briefly my 1st Amendment claim, it was unfair that it found that the 1st Amendment did not protect my complaints about discrimination practiced against me, and concluded that my discrimination claims are foreclosed by Pickering. By no stretch or strain of the imagination can Pickering be used to foreclose on my claims of discrimination about my own situation when the 1st Amendment gives me the right of freedom of speech and Section 704(a), Title VII states that:

"It shall be unlawful...for an

employer to discriminate against any of his employees because he opposed any practice made unlawful...in any manner".

4. **It has been held on the same matter that the speech of a nontenured, such as I was, is a protected 1st Amendment activity.**

It was also unfair for the District Court and the Court of Appeals to foreclose on my 1st Amendment claims as unprotected because I was nontenured when other nontenured employees in similar circumstances have been protected under the same 1st Amendment. On the same matter in White v. South Park Independent School District, 639 F.2d 1163 (5th Cir. 1982): (a. It, however, was held in White that the conduct of this "nontenured" public employee concerning the internal operating procedures, was constitutionally protected (b. The "nontenured" (probationary) teacher's speech was held as not necessarily unprotected simply because it concerned the internal operating procedures. (c. As my

rights were defeated because I was "non-tenured", the "nontenured" teacher's rights in this case were not defeated by the fact that the teacher did not have tenure. (d. I was not provided due process in accordance with established agency procedures (Regulation F), the "nontenured" teacher in White was entitled to due process in accordance with established agency procedures. (e. Therefore, because of the White, case my complaints opposing internal discriminatory operating procedures are also protected, and due process under established agency procedures (Reg. F) was also authorized.

I was abruptly terminated upon the asserting my 1st Amendment rights of filing my formal notice of intent to appeal (RA, "M") and was not afforded due process in accordance with established agency procedures under Merit System Regulation F (RA, "A"). This Court's safeguards applicable here are:-

"In dissent, however, Mr. Justice Stevens noted, `that the allegations of [respondent's] complaint are sufficient to require a trail of his claims that the transfer [termination in my case] was made in retribution for the exercise of protected rights [1st Amendment and Georgia Merit System Reg. F rights in my case]...'". (Hohman, supra.).

"...transfer [termination in my case]...was a retaliatory measure intended to punish appellant for attempts to exercise his legal rights...Thus the complaint goes further than simply to allege... some general `liberty' right of appellant...It asserted a claim for relief on the ground that not only the transfer [termination in my case] but also the inflicting of...punishment were retaliation for the exercise of appellant's lawful rights. (Hohman v. Hogan, 597 F.2d 490 2d Cir. 1979, quoting Hains, supra, quoting Conley, supra).

"this court did direct a trail because there were `genuine issues of material fact as to whether... transfer [termination in my case] either violated his first amendment rights or his federally protected right [civil rights in my case]" (Hohman, supra).

"...the transfer [termination in my case] was a retaliatory measure intended to punish appellant for attempts to exercise his legal rights [1st Amend. and Reg. F grievance rights in my case]... Thus the complaint goes further

than simply to allege that the transfer violated some general `liberty' right of appellant...but also the inflicting of...punishment [termination in my case] were retaliation for the exercise of appellant's lawful rights...." (Hohman v. Hogan, 597 F.2d 490, 2d Cir. 1979).

5. **It has been held on the same matter that an abrupt termination after notification under the 1st Amendment is illegal.**

Based on the above and because I was abruptly terminated, I don't think it was fair that it was not held for my case as it was held on the same matter that is mandated in Jefferies v. Harris County Community Action Association, 615 F.2d 1025 (5th Cir. 1980): (a. As I had notified my supervisors of my intentions verbally on October 16th and in writing (RA, "M") on the day before I was dismissed the plaintiff in Jefferies had notified her supervisor of her intent the day before she was dismissed. (b. As I have claimed my abrupt discharge was retaliation, the abrupt dismissal of plaintiff Jefferies after her notifi-

cation was given suggested "retaliation". (c. As the District Court also failed to consider my 1st Amendment claims and my informal and written notification to my supervisors, in this case the District Court also failed to take into account the "informal verbal notice" given to the supervisor.

Secondly, Chief Judge Godbold, Circuit Judge Roney, and Circuit Judge Tjoflat did not relate the identical circumstances that they found in my case to the precedent of (Jefferies, supra.):

> "Jones reported for work May 18, 1981, but was not credited with starting until June 1, 1981. When he informed his supervisors that this treatment violated the department's regulations, he received no relief. He continued to press this claim as well as other objections to his working conditions, and was fired in October 1981." (RA, "F").

They also did not relate that the Commissioner of the Department of Human Resources), in writing (RA, "D"), made it known that it was my protests for my

rights that caused my premature termination:

> "...problems developed in the management of his employment, which grew to such magnitude that continuation of employment was not advisable" (Exhibit "D11", RA).

Both courts also failed to take into account that notification under Regulation F.203, F.402.2, and F.404.1 (RA, "A") provided for 15 and 60 days (F.501 and F.502) to file the formal grievance complaint and that such notification stayed the termination until the process could be completed. Therefore, the supervisors were prohibited in enforcing my termination on October 23.

6. **The lower courts violated the rules of evidence and prima facia.**

I don't think it was fair that all prima facia evidence was ignored by the courts when this Court has mandated that:

> "...must present some `significant probative evidence tending to support the complaint'. (General Business Systems v. North American Phillips Corp., 699 F.2d 965, 971, 9th Cir. 1983); quoting First National Bank v. Cities Service Co., 391 U. S. 253, 290, 88 S.Ct. 1593,

20 L.Ed.2d 569, 1968).

> "...we conclude that factual issues have been presented which could, if proved, state a cause of action of a deprivation of constitutional rights. As in Hains, supra, `[w]e cannot say with assurance that ... it appears beyond doubt that that plaintiff can prove no set of facts in support of his claim which would entitle him to relief'" (Hohman v. Hogan, 597 F.2d 490 2d Cir. 1979, quoting Hains, supra, quoting Conley, supra).
>
> "We do not know whether appellant can prove these allegations, but he must be given the right to try". (Hohman).

I do not think it was fair that both courts failed to take into account the findings of the Examiner of the Georgia Department of Labor as justifying prima facia (RA, "E"). And, both courts gave no consideration to the fact that the employer also did not provide the statement required by Georgia law...giving reason for my termination in accordance with Section 6(a), Georgia Employment Security Law, on my Notice of Separation, Georgia Form ESA-800, R-2/77, RA,

"N") which also raised prima facia for a federally protected claim.

Of 4,648 employees DFACS at the time of my employment, 88.7% were women, 9.28% were white males, while only 1.95% (reduced to 1.89% with my termination) were black males. This Court has mandated in Teamsters v. United States, 431 U.S. 324 (1977) that statistics alone (RA, "M") would suffice to establish a prima facie case and that an employer's standard operating procedure for discrimination can be determined by a statistical disparity in the work force.

All of the above provide prima facia a reason that would justify my termination then, the employer had no legal reason to justify my termination. Griggs, 401 U.S. 424 (1971) must be applied:

> "If an employment practice which operates to exclude cannot be shown to be related to job performance the practice is prohibited..."

Webster v. Redmond, 599 F.2d 793-1979

established that a probationary employee could be dismissed during a probationary period, however, when Griggs is applied, a showing of disparate treatment would suffice in establishing a case. The 7th Circuit also determined that in order to define whether due process requirements apply, it is first necessary to look at the "nature" of the interest at stake (discrimination) and the test for a prima facie case as articulated in McDonnell Douglas Corp v. Green. This was not done in my case.

7. **Factual issues raising federally protected interest, other than "property" interest, were present and presented as issues and ignored by the lower courts:**

Although I inartfully pleaded the obfuscation that is written into the Merit System Rules and Regulations and Georgia law, as respondents put it "in agonizing and yet unintelligible detail", factual issues raising other federally protected interest, other than "property"

"...we conclude that factual issues have been presented which could, if proved, state a cause of action for deprivation of constitutional rights. As in Haines, supra,`[w]e cannot say with assurance that...it appears `beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief'". (Hohman v. Hogan, 597 F.2d 490, 2d Cir. 1979).

8. **Dismissal of my pro se complaint and my Rule 60b appeal as frivolous violated this Court's standards for pro se complaints:**

At the suggestion of respondents criticism of my pro se style (RA, "P"), it was not fair for the District Court to dismiss my civil rights claims and the Court of Appeals to dismiss my Fed. R. Civ. P. 60(b) claims frivolous without applying the following tests:

"The accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claims which entitle him to relief" (Haines v. Kerner, per curiam, 404 United States Supreme Court, 519, 1971; Conley v. Gibson 355 U. S. at 46, 1957; See also Robert v. Heyne, 547 F. 2d 994, 1976).

"The test of legal frivolity is whether a plaintiff can make a rational argument on the law and facts in support of his claims. Wiggins v. New Mexico State Supreme Court, 664 F.2d 812, 10th Cir. 1981, quoting Bennett v. Passic, 545 F.2d 1260 (10th1976).

"Pro se civil rights suit...alleging that unsanitary conditions and inadequate facilities at jail... did not appear to be frivolous insofar as it sought damages." (Ulmer v. Chancellor, 691 F.2d 209 (5th Cir. 1982).

"It has been assumed that the dismissal by the trial court must be treated as proper only if the standard of Conley v. Gibson, 355 U. S. 41 (1957), would permit the grant of a motion under Fed. Rule Civ. Proc. 12 (b)(6)." (Rehnquist, dissenting, Cruz v. Beto, 405 U S at 326, 1971).

A pro se is "entitled to an opportunity to offer proof" of allegations. (Haines v. Kerner, per curiam, 404 United States Supreme Court, 519, 1971.

"An unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims" (Hughes v. Rowe, U. S. Supreme Court, 449, per curiam, at pg. 15, 1980).

"A District Court is in error in dismissing a pro se complaint without allowing him to present evidence on his claims." (Haines v. Kerner, per curiam, 404

U. S. 519, 1971;

"It has been assumed that the dismissal [pro se] by the trial court must be treated as proper only if the standard of Conley v. Gibson, 355 U. S. 41 (1957), would permit the grant of a motion under Fed. Rule Civ. Proc. 12 (b)(6)." (Rehnquist, dissenting, Cruz v. Beto, 405 US326, 1971).

"...especially when the case is still young, District Court before dismissing must consider less drastic alternative sanctions... Although we sympathize with the district court's frustrations...we nevertheless reverse the order dismissing the action so that lesser penalties may be imposed " (Raiford v. Pounds, 640 F.2d 944 (9th Cir. 1981) quoting Tolbert v. Leighton, 623 F.2d 585, 587 (9th. Cir. 1980).

"The only prejudice claimed by defendants is the aggravation of their anxiety...under these circumstances the district court abused its discretion in dismissing plaintiff's case" (Raiford v. Pounds, 640 F.2d 944 (9th 1981)

"Because dismissal is a harsh penalty, it should be imposed only in extreme circumstances. Industrial Bldg. Materials, Inc v. Interchemical Corp., 437 F.2d 1336 (9th Cir. 1980)

"In borderline [pro se] cases, the court should not dismiss, but should let the case proceed and rule on a subsequent motion to dismiss if one is presented.")

(Watson v. Ault, 525 F.2d 268, 272 (5th Cir. 1976).

"Dismissal [pro se] is a harsh penalty and should be imposed only in extreme circumstances. Franklin v. Murphy, 745 F.2d 1221, 1984.

"We have held that 'an action should not be dismissed for lack of jurisdiction without giving the [pro se] plaintiff an opportunity to be heard..." (See Jones v. Comm. Redevelopment Agency of L. A., 733 F.2d 646, 9th Cir. 1984, quoting May Department Store v. Graphic Process Co., 637 F.2d 1211, 1216, 9th Cir. 1980).

"Because the [pro se] complaint was dismissed for failure to state a claim, we must take as true its handwritten, pro se allegations". Estelle v. Gamble, 429 U. S. 99, 1976, quoting Cooper v. Pate, 378 U. S. 546, 1964, per curiam. [See also Fed. R. Civ. P. 8(d)].

After dismissing as frivolous, I don't think it was fair for the Court of Appeals to deny (RA, "L") my petition for a rehearing en banc with a novel approach of treating my Fed. R. Civ. P. 60(b) rehearing petition as only a motion for reconsideration when a decision, Jones v. State of Georgia, 725 F.2d 622 (11thCir. 1984), had been issued (RA,"F").

9 and 10: **While ruling simply on the matter of a "property interest", my other federally protected claims, inartfully presented, were overlooked and improperly foreclosed:**

In order to hold against me, the lower courts made an improper exception to the F. R. Civ. P.:

The decision against me is held together by this thinly cloaked "exception" being made to Rules 12(b)(1)(6) (RA, "F")... ("Exceptions to this rule exist, however, when the "plaintiff's claim 'has no plausible foundation') without considering Hains, and without allowing any consideration that such a broad use of such an "exception" to the Fed. R. Civ. P. might usurp other federally protected rights that arose under the 1st Amendment and Title VII, 42 U.S.C. 2000e-2(a)(1)(2).

State law and merit system rules and regulations granting me rights cannot be usurped by state officials and a court of law. State law, Merit System Rules and Regulations, discrimination and constitu-

tional law must be read together to see if they, in fact, create mutual expectations between the employer and the probationary employee before an "exception" to the rules can be applied. In my opinion, Georgia law and Merit System Rules and Regulations provide a mutual procedural expectations.

I don't think it was fair for the District Court and the Court of Appeals to focus only on the single suggestion of the State Attorney General that property rights of a probationary employee was the only federally protected claim at stake. This Court's pro se standards show that the judgment must be VACATED AND REMANDED when other federally protected claims are overlooked:

> "However, the Court of Appeals seems to have overlooked the fact, clearly stated in petitioner's brief on appeal, that the...hearing [Reg. F. grievance hearing in my case] did not take place..." (Huges, supra.).
>
> The Court of Appeals focused primarily on the alleged actions of...

[property interest of probationary employees in my case], and did not separately consider whether the allegations against...[discrimination and retaliation in my case]...stated a cause of action". Estelle v. Gamble, 429 U. S. at 108, 1976.

When all plausible foundation (including discrimination) had been ignored by the lower courts, I don't think it was fair that the District Court and the U. S. Court of Appeals did not rule, unequivocally, on my other claims that were at stake at the same time they applied the without "plausible foundation" exception clause to bypass the safeguards of Fed. R. Civ. P. 12(b)(1)(6) in order to deny me any avenue of redress on my other federally protected claims that were in addition to that of a "property interest", and to deny me equal protection under the law.

It was unfair to apply Williamson v. Tucker, 645 F.2d 404, 415 (5th Cir. 1981) (RA, "F") to arrive at the procedural conclusions for applying an "exception"

to Fed. R. Civ. P. 12(b)(1)(6) without also applying the safeguard also found in Williams:

> "However, the district court must give the plaintiff an opportunity for discovery and for hearing that is appropriate to the nature of the motion to dismiss."

Since the District Court denied my motion for discovery and there were other federally protected interests (other than a "property" interest) at stake in my pro se complaint, instead of applying the "exception" to Fed. R. Civ. P. 12(b)(1)(6) and using the approach that was used by the Court of Appeals and considering the intent of the above safeguards, I suggest that it would have been much more fair if the Court of Appeals had used the following approach instead of the "exception" approach that the lower courts used to deny me my rights. Instead of the approach used (See page 28, #2, herein and RA, "F" at [1]), the approach used should have been:

> When a district court has a pro se complaint pending before it and defendants have offered a 8(a), 12(e), 12(b)(6), 12(b)(1), and a replead motion, the generally preferable approach, if the 12(b)(1) motion essentially challenges the existence of a federal cause of action is for the court to apply the Haines test, and if applicable, the Mcdonnell v. Green, and the Griggs tests to determine if there are federally protected interest other than `property' and `liberty' are at stake. If there is a deficiency in the complaint and the deficiency is repairable and can be cured by amendment, the court, using Haines, should issue an order to show cause, permitting the pro se plaintiff to respond and to amend. Then, the district court may find on the 12(b)(1) jurisdiction question and then decide the 12(b)(6) question. In borderline cases, however, the court should not dismiss, but should let the case proceed and rule using the Haines test on a subsequent motion to dismiss if one is presented.

11. **Use of the "exception" to the rules by the lower courts denied me a full and complete hearing on my other interests at stake:**

By applying the "exception" to the rules it eliminated the rules for prima facia and, impermissibly placed me, a black "protected group member", in a

classification governed by U. S. Supreme Court doctrine of Bishop. This effectively and improperly removed me from the safeguards and tests governed by the U. S. Supreme Court doctrine of Mcdonnell Douglas Corp. v. Green, as extended by other controlling appellate progenies e. g. Marshall v. Goodyear Tire and Rubber, 554 F.2d 730 (5th Cir., 1977); Marks v. Prattco, 607 F.2d 1153 (5th Cir.); Whiting v. Jackson State University, 22 FEP 1296 (5th Cir. 1980). The safeguards and tests under these standards that were not followed by the lower courts are: (1. I am black, therefore, I am a member of the protected minority entitled to equal protection under discrimination law; (2. I was qualified for the job from which I was discharged, and there was no finding of poor performance for that job (See RA, "B", "D", "E", and "N") that would have justified my termination; (3. I was discriminated against and not provided

opportunity for the other jobs available in DFACS although qualified for those jobs.

12. **Use of the "exception" to the rules by the lower courts denied me protection of benefits provided for by Roth and Georgia Merit System Regulations.**

Without any evidence that benefits may have accrued under rules and regulations (RA, "A"), and without a hearing of any type being held by the District Court, the Court of Appeals BYPASSED all of my other federally protected claims under these rules (RA, "A") and unilaterally concluded that under Regulation 12.301.1 I had no property interest and broadly applied Bishop to foreclose on all of my claims without also applying the tests and safeguards mandated in Roth.

Roth gives the impression that Rules promulgating benefits create an interest. My interests are created by Merit System Rules (See RA, "A"), and cannot be denied to me by the employer and the lower courts without a full and complete hearing.

Although the lower courts applied Roth

to hold against me, it was unfair that the lower courts did not apply the safeguards of Roth. (See Roth safeguards at GROUP 4, page 13, herein).

13. **Arguable legal substance was contained in my claims warranting a full and complete hearing:**

The Court of Appeals (RA, "F") found sufficient arguable legal substance for a property interest (Rule 12.302.2, RA, "A") to the expiration of my six month contract:

a. "His supervisors, rather than citing to 12.301.1, cited to another regulation, 11.202A, which arguably only applied to employees who have completed their working test period".

b. Rule 12.302.2 states: "other non-status employee appointed under Rule 9 shall be terminated at the expiration of the maximum period for which he can be so employed."

c. The only rule which stipulates that an employee will gain no benefits or status is Rule 9.804 which states that students on special student appointments will gain no benefits. No other employee in the classified service is so stipulated.

d. Under Roth tests: (1. Rules 11.102, 11.103, 11.203, and 12.302.2 guaranteed six months employment. (2. My termination was before the six month contract had been completed. (3. The Roth case was for rehiring after his contract was completed. (4. The circumstances of Roth used to foreclose on my case were different than in Roth: (a. I was retaliated against because of my opposition to discrimination and was terminated before my nontenured term had been completed. (b. Roth was hired for a fixed term of one academic year, and he had completed the one year term and was not rehired. (c. There was no question of "rehiring" in my case.

e. And, pro se standards mandate that:

> A claim that has "arguable legal substance...provide sufficient factual substance to survive dismissal". (Franklin,supra.).

14. **My case was dismissed only because I was pro se**

I don't think it was fair that at respondent's suggestion ("In the case sub-

judice, the Complaint...defies all attempts at comprehension. It is so prolix, unintelligible, confusing and ambiguous as to leave the Defendants in the dark as to the true nature of the claim or claims which Plaintiff actually seeks to assert in this lawsuit. In this situation, the Complaint should clearly be dismissed.") the District Court dismissed my civil rights claims without a hearing or an amendment when it has been mandated that deficiencies of the complaint can be cured by amendment." (Stanger v. City of Santa Cruz, 653 F.2d 458, 460 (9th Cir. 1980; Franklin v. Murphy, 745 F.2d 1221 1984). (See also Jones v. Commty. Redevelopment Agency of L. A., 733 F.2d 646, 9th Cir. 1984, quoting May Dept. Store v. Graphic Process, 637 F.2d 1211, 9th Cir 1980).

Judge Shoob ignored my discrimination claims as amended in my Motion for Reconsideration. In his order of April 22, 1983

(RA, "O") he only could insult my pro se brief with his criticism that my pro se brief was a "lengthy brief. My complaint might have been lengthy but it contained federally protected claims. Length is not legal justification for denying my discrimination claims. It is mandated:

> "The Federal Rules reject the approach that pleading is a game of skill in which one misstep...may be decisive to the outcome and accept the principle that the purpose of pleadings is to facilitate a proper decision on the merits. Cf. Maty v. Grasselli Chemical Co., 303 U. S. 197. (Conley, supra).
>
> "(" if the defect is repairable, the court should issue an order to show cause, permitting the [pro se] plaintiff to respond and to amend....In borderline cases, the court should not dismiss, but should let the case proceed and rule on a subsequent motion to dismiss if one is presented.") (Watson, supra).

It is reasonable to presume that such a comment (RA, "O") by Judge Shoob shows a biased attitude toward me as a pro se, and this attitude influenced Judge Shoob's decision not to hear my pro se 1st Amend-

ment and discrimination complaints against the mandate of this Court in Haines, supra.

It was not fair that when I cleaned up my pleadings on my own initiative and submitted them to both lower courts under Fed. R. Civ. P. 60(b) (See RA, "I", Exhibit "D") refused to allow against mandates:

> "Under the liberal rules governing pro se filings, we find that the district court should have treated this filing as an amendment to appellant's complaint. McGruder, supra, 608 F.2d at 1025 (materials filed by pro se litigant, however denominated, should have been treated as an amendment to the complaint when litigant retained right to amend pleadings as a matter of course); see also, Woodall v. Foti, 648 F.2d 268, 272 (5th Cir. 1981) (letters to judge); Wright v. El Paso County Jail, 642 F.2d 134, 135 n. 1 (5th Cir. 1981) (`motion in support of complaint' treated as amendment to complaint)."

15. **The lower courts improperly allowed an ex post facto change to be made in the rule respondents used to terminate me**

It was fair that after my suit was filed on 19 Nov. 1982 Judge Shoob allowed the State Attorney General, without a hearing or without allowing me to present

any evidence, to make an ex post facto change in the State Personnel Board rule that was used to effect my termination. My termination was made under the Work Test Separation Rule 11.202A which couples with the Involuntary Separation Rule 12.302.2 and provides for a full six month work test period. My status was, in effect, changed after the fact to agree with the State Attorney General's argument that my termination was made under the Involuntary Separation Rule 12.301.1 and DHR Rule A.6.a which he misled the Court into believing. However, I had contended, but was not allowed to prove it, that the rules claimed by the Attorney General operate more harshly against blacks (See RA, "M" and "I", CHARGE I-3 thru I-6):

> Quoting Meachum the 2d Cir. stated: "...a state may subject a [person] to the rules of the... system 'so long as the conditions [termination under Rule 12.301.1] do not otherwise violate the Constitution'". (Hohman).

I don't think this change was fair

because the ex post facto change to the official record changed the context and meaning of the facts before the court. In Blowers v. Lawyers Cooperative Publishing Co. 25 FEP Cases 1425, 1435 (W.D.N.Y., 1981). (See also Lock v. Kansas City Power and Light Co., 660 F.2d 359, (8th Cir. 1981), an ex post facto change gave rise to an inference of pretext because changing the reasons for the adverse action after the suit was filed, in and of itself, constitutes nearly overwhelming proof of discrimination and retaliation". And, in Whiting v. Jackson State Uni., 22 FEP Cases 1296, (Former 5th Cir. 1980) it has been held that:

> "The plaintiff must be afforded a fair opportunity to establish that the employer's asserted justification is in fact, a ruse for a discriminatory decision..."

I don't think it was fair that the Court of Appeals, without any evidence having been addressed in Judge Shoob's order, glossed over the change/issue with-

out any consideration to the "under color of any statute, ordinance, regulation, custom, or usage...deprivation of any rights, privileges..." clause of 42 U.S.C. 1983 and what is also prohibited as "custom" in Monell v. Dept. of Social Services, 436 U. S. 658, 1978 by succinctly holding:

> "...Jones's supervisors apparently referred to the wrong regulation"

There was no mistake made. My termination was motivated, planned, and calculated as retaliatory because I protested the discriminatory actions of my supervisors. Even Bishop mandates that:

> "In the absence of any claim that the public employer was motivated by a desire to curtail or to penalize the exercise of an employees's constitutionally protected rights, we must presume that officials action was regular..."

16. **I was improperly denied the opportunity to prove that Rule 12.301.1 operates more harshly against blacks.**

I don't think it fair that when I have claimed that Rule 12.301.1 is unfair and used to terminate blacks more than it is

used to terminate whites, but I am no given the opportunity by the courts t prove that this rule is clearly illega under Title VII, Sec. 703(a)(1)(2), 703(h) 704(a), under Monell, and under Ga. Meri System Acts 81, 1975 and 1398.

17. Pre and post-termination right were illegally foreclosed.

It is not fair that when I had a 1s Amendment right under the Merit System' Reg. F (RA, "A") to pre-termination and post-termination hearing on my discrimina- tion claims, and I had properly filed the notice on October 22d for such a hearing (RA, "M"), and respondents, ex post facto, denied me my rights (RA, "C") under Regu- lation F, that my termination can be held as legal, proper, and on October 23d.

18. The court's scope of inquiry in- to my claims was not limited by th Bishop "harsh fact" rule:

When the federal court is the only forum, it was not fair to dismiss my claims on the conclusion that a scope of inquiry into my claims was limited by the

Bishop "harsh fact" rule (RA,"G"):

> "The federal court is not the appropriate forum in which to review the multitude of personnel decisions that are made daily by public agencies. We must accept the harsh fact that numerous individual mistakes are inevitable in the day-to-day administration of our affairs".

However, this Court has also said:

> "What ever may be the limits on the scope of inquiry of courts into internal administration..., such as those asserted by [pro se] petitioner, however, inartfully pleaded, are sufficient to call for the oppor tunity to offer supporting evidence." (Hains, supra.)

CONCLUSION

Because I am not a lawyer and acting pro se, I have not had any remedy at law to redress my rights denied (RA, "A") and as pleaded in Exhibit "D", RA, "I": Whether or not the State of Ga. Merit System Rules and Regulations (RA, "A") granted me pre/post-termination procedural rights for grievance/appeal, and did supervisors discriminate and retaliate by seizing upon the pretext of a moment and terminate me to deny these rights (RA, "A")

and to prevent other job opportunities and my promotion to permanent status?

I feel what Mr. Justice Brennan concluded best speaks for me (Justice, Mr. Marshall, Mr. White, Mr. Douglas, and Mr. Blackmun each appear to join, in some manner, in the dissent):

> "...the federal courts are the appropriate forum for ensuring that the constitutional mandates of due process are followed by these agencies of government making personnel decisions that pervasively influence the lives of those affected thereby; the fundamental premise of the Due Process Clause is that those procedural safeguards will help the government avoid the `harsh fact' of `incorrect or ill-advised personnel decisions'."

> "Petitioner seeks no more than that... he be accorded procedural safeguards before those interests are deprived by arbitrary or capricious government action."

What makes Bishop so sacred that it is used to override the safeguards of Hains (See GROUP 2, page 10, herein) and deny me promulgated procedural safeguards (RA, "A") on the job and in court? It is not justice when procedural safeguards and

rights are avaliable under Georgia law and Georgia agency rules (RA, "A") and they are denied by federal law. Use of Bishop has gone astray; it now stymies fairness. With the above Justices dissenting on Bishop, Bishop appears to be flawed.

Federal law (Bishop) should not require that when crossing the threshold of employment I must relinquish my rights to equal protection of the law, and I subject myself to disenfranchisement at the whims of others. I am entitled to no fewer rights than those enjoyed by any other U. S. citizen who has not crossed this threshold. Being renamed "probationary" does not change my constitutional and federally protected rights.

The decision against me is inconclusive: (1. I have been unconstitutionally required to relinquish my constitutional rights to free speech and equal protection of the law from discrimination when I crossed the threshold into employ-

ment with the State of Ga.. (2. all of my interests and all legal safeguards were predisposed by the broad application of the Bishop harsh fact rule. (3. with complete disregard for my other interests (RA, "A") that were at stake and the violations by respondents of the rules at RA, "A", a no plausible foundation exception was improperly applied to F.R.Civ.P. 12. (4. there was no assurance of procedural safeguards before interests were deprived by arbitrary and capricious action. (5. although safeguards were present, both on the job (See RA, "A") and in court (See GROUP 1-7 laws pages 10-18, herein), they were not followed. (6. Dismissal of my relief of judgment request did not satisfy the test for frivolousness: lacking in my seriousness in obtaining my rights promulgated and pursuant to RA, "A" and in law. (7. it was made impossible for me to receive fairness and justice in any form or fashion, under any constitutional

right, under any federal law, under any U. S. Supreme Court decisions, under any appellate precedent from other circuits, under any Fed. R. Civ. P., under Ga. law, and under rules and regulations (RA, "A"). (8. I have been victimized by the very system that was supposed to be the processor of my quest for justice.

Where I have not received my full rights to a properly completed appellate review, due process, and equal protection of the law under the 1st and 14th Amendments, under Sections 703(a), 703(h), and 704(a) of Title VII, under Fed. P. Civ. P. 12(b)(1)(6), 60(b), and 59(b), under the safeguards of Hains, Roth, Mcdonnell v. Green, Griggs, Bishop, Williams, Brownlee, White, and Jefferies tests, under my privileges/entitlements/rights and benefits as a probationary employee expressly provided for under Ga. Employment Rules and Regulations shown at RA, "A" and as pleaded in Exhibit "D", RA

"I", under Section 6(a), Ga. Employment Security Law, and under Ga. Merit System Act 81, 1975 as amended by Act 1398 demands adequate corrective action: (1. Therefore, because there has been flagrant unfairness of due process and equal protection under the law, and because safeguards were not applied, the way should be cleared by reversing the judgement reinstating my right to bring suit (See Exhibit "D", RA "I") for resolution of all of my federally protected claims not yet resolved. (2. Or, correctly reflect all of the facts concerning me in the law books by balancing the equivocality in the published decisions by including a discussion and findings on my federally protected claims and rights as provided for in the above referenced laws and Ga. Rules and Regulations denied (RA, "A").

Respectfully submitted,

Roland A. Jones, pro se
Lt. Col. U. S. Army (Ret.)

CERTIFICATE OF SERVICE

I certify that I have served 1 copy of the foregoing to counsel of record by mail on the 14th day of March 1986, and served 1 copy this 6th day of May, 1986 to:

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